

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LANDWORKS CREATIONS, LLC,

Plaintiff,

VS.

C.A. No. 4:05-CV-40072-FDS

**UNITED STATES FIDELITY AND
GUARANTY COMPANY, et al.**

Defendant,

**UNITED STATES FIDELITY AND GUARANTY COMPANY’S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

In accordance with the Court’s Order of February 25, 2008, United States Fidelity and Guaranty Company (“USF&G”) moves the Court to enter summary judgment in its favor on Landworks Creations, LLC’s (“Landworks”) claims for fraud, tortious [sic] interference, conversion, vicarious liability, and negligent supervision (Counts II, III, IV, V, VII and VIII of the Amended Complaint).

By Memorandum and Order of February 6, 2008 (“the Decision”)¹, the Court granted Lovett Silverman Construction Consultants, Inc.’s (“L-S”) Motion for Summary Judgment regarding Landworks claims for fraud, tortious [sic] interference, and violations of Mass. G.L. ch. 93A and 176D (Counts II, III, IV and VI of the Amended Complaint).² Landworks’ claims against USF&G for fraud and tortious [sic] interference (Counts II, III and IV) are identical to those asserted against L-S. USF&G moves for summary judgment to extend the Decision to these identical claims. USF&G also moves for summary judgment on Landworks’ claims of (1)

¹ A copy of the Decision is attached as Exhibit 1 to the Affidavit of Eric C. Hipp, which is filed herewith.

² A copy of the Amended Complaint is attached as Exhibit 9 to the Affidavit of Eric C. Hipp.

vicarious liability and negligent supervision (Counts VII and VIII) based upon Landworks' failure to sustain any claims against L-S; and (2) conversion (Count V) because it cannot establish a prima facie case.

As further grounds for this Motion, USF&G incorporates by reference L-S' Motion for Summary Judgment and supporting materials,³ and relies upon the Memorandum of Law in Support of its Motion for Partial Summary Judgment and the Affidavit of Eric C. Hipp, which are filed herewith.

WHEREFORE, USF&G requests that this Court grant summary judgment in favor of USF&G as to Counts II (fraud), III (tortous [sic] interference), IV (tortous [sic] interference), V (conversion), VII (vicarious liability), and VIII (negligent supervision) of Plaintiff's Amended Complaint; and grant such other and further relief as this Court deems appropriate.

RULE 7.1(A)(2) CERTIFICATION: Pursuant to Local Rule 7.1(A)(2), counsel certifies that they have attempted in good faith to resolve or narrow the issue presented by this motion.

Respectfully submitted,

**UNITED STATES FIDELITY &
GUARANTY COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants (none) on March 5, 2008.

/s/ Eric C. Hipp
Eric C. Hipp

/s/ Eric C. Hipp

Peter G. Hermes, BBO No. 231840
Peter C. Netburn, BBO No. 546935
Kevin J. O'Connor, BBO No. 555249
Eric. C. Hipp, BBO No. 642658
HERMES, NETBURN, O'CONNOR &
SPEARING, P.C.
265 Franklin Street, Seventh Floor
Boston, MA 02110-3113
(617) 728-0050
(617) 728-0052 (F)

Dated: March 5, 2008

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³ Copies of L-S' Motion for Summary Judgment and supporting materials are attached as Exhibits 2 - 8 of the Affidavit of Eric C. Hipp